

EXHIBIT 5
PART 1 OF 3

S148684

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

SIEUNGO

On Habeas Corpus

Case No. _____

SUPREME COURT
FILED

DEC - 7 2006

Frederick K. Ohlrich Clerk

DEPUTY

FROM THE JUDGMENT OF THE SUPERIOR COURT OF ORANGE COUNTY, THE
HONORABLE KAZUHARU MAKINO, JUDGE PRESIDING

PETITION FOR WRIT OF HABEAS CORPUS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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SIEU NGO

On Habeas Corpus

Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE RONALD GEORGE, CHIEF JUSTICE, AND TO
THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA:

Petitioner, SIEU NGO, by and through his attorneys, JENNIFER
PEABODY and MARILEE MARSHALL, petitions for writ of habeas corpus and
by this verified petition alleges:

I

Petitioner is in the custody of the California Department of Corrections at
the Correctional Training Facility in Soledad, California serving a term of 16 years
to life following his conviction in 1994 in Orange County Superior Court Case No.
C199109, wherein petitioner was convicted of second degree murder in violation
of Penal Code section 187 and it was found that petitioner was vicariously armed
with a firearm within the meaning of Penal Code section 12022. Petitioner was

received by the Department of Corrections on February 1, 1994, when his life term commenced. Petitioner's minimum parole eligibility date was May 24, 2003. On February 3, 2006, petitioner appeared before the Board for his second subsequent parole consideration hearing (third actual hearing). Petitioner was denied parole for a period of two years. (Exhibit A: Parole Consideration Hearing.) At this point, petitioner has served a total of twelve actual years in state prison. If given post conviction credit as afforded in Title 15, section 2410, subdivision (b) of the California Code of Regulations, petitioner's term to date is more than 16 years. (CCR, Tit. 15, § 2403, subd. (c).) Petitioner alleges that the continued denial of parole violates his Fifth and Fourteenth Amendment right to due process of law. There is no evidence to support a finding that petitioner currently poses an unreasonable risk to society if released from prison. Accordingly, his continued confinement violates the due process clauses of the Fifth and Fourteenth Amendments and constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

II

Anthony Kane is the acting warden of the Correctional Training Facility in Soledad, California and thus, is the legal custodian of petitioner.

III

Dennis Kenneally is the Executive Director of the Board of Parole Hearings (formerly the Board of Prison Terms), the agency which determines whether

prisoners serving life sentences are suitable for release on parole.

IV

Petitioner was charged with the murder of Angel Gonzales. It was further alleged that petitioner was vicariously armed with a firearm within the meaning of Penal Code section 12022. On October 21, 1993, petitioner was convicted of second degree murder and it was found that petitioner was vicariously armed with a firearm. Petitioner was sentenced to 15 years to life plus one year for the armed allegation. Petitioner's life term commenced on February 1, 1994. Petitioner's minimum parole eligibility date was May 24, 2003.

V

The facts of the underlying offense are set forth in the trial court file (Case No. C199109) and were summarized by the Parole Board as follows:

On September 18, 1992, Angel Gonzales was beaten and shot to death near Fullerton High School as he was walking home after school. An investigation revealed that earlier in the day, the victim, a member of the "Fullerton's Toker's Town," a Latin gang and member of "Fullerton's Boyz" B-O-Y-Z, an Asian gang were at McDonald's restaurant near the high school. The victim and No, that's N-O Muhamed M-U-H-A-M-E-D, had a confrontation with each claiming their respective gang affiliations. After this non physical altercation, the group of Asians which at the time included Sieu Phong Ngo obtained a firearm. Ngo, N-G-O, and the Asian gang members returned to the school where they waited for Gonzales. As he walked home, he was attacked and beaten. During the physical altercation the victim was shot one time in the back by Usumang U-S-U-M-A-N-G last M-U-H-A-M-E-D, the group of five Asian gang members including Ngo left the area after the shooting. Angel Gonzales died at the scene as a result of the gun shot wound. Ngo, Jimmy Dao, D-A-O and Asat Cham, A-S-A-T-C-H-A-M fled

to the state of Washington. They were subsequently apprehended there and the murder weapon, a stolen 22 caliber handgun was recovered in the vehicle. (Exhibit A, pgs. 5-6 of the Hearing.)

VI

On May 13, 2002, the Board of Prison Terms (which is now referred to as the Board of Parole Hearings) conducted petitioner's Initial Parole Consideration Hearing. The Board found petitioner unsuitable and denied parole for a period of two years. (Exhibit B: Initial Parole Consideration Hearing 5/13/2002.) In support of its finding that petitioner currently posed an unreasonable risk to society, the Board found that the "offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering and life" and the "motive for the crime was inexplicable or very trivial in relation to the offense." (Exhibit B, p. 57.) The Board further found that petitioner had an escalating pattern of criminal conduct. (Exhibit B, p. 58.) Petitioner was, however, commended for remaining disciplinary free, obtaining a positive psychological evaluation, participating in NA, completing two vocations and securing positive parole plans. (Exhibit B, pgs. 58-59.) The Board recommended that petitioner remain disciplinary free, upgrade educationally and vocationally, and participate in self-help and therapy. (Exhibit B, p. 61.)

On August 3, 2004, the Board conducted petitioner's initial subsequent parole consideration hearing (second actual hearing). The Board found petitioner unsuitable for parole and denied parole for a period of one year. In finding

petitioner unsuitable for parole, the Board found that the offense was “carried out in an especially cruel and callous manner.” (Exhibit C: Parole Consideration Hearing 8/3/04, p. 58.) Specifically, the Board concluded that the “offense was carried out in a dispassionate” and “calculated manner.” (Exhibit C.) The Board further found that the offense was “carried out in a manner that demonstrates an exceptionally callous disregard for another human being,” and the motive for the crime was “trivial.” (Exhibit C, p. 58.) The Board commended petitioner for his parole plans, lack of disciplinary problems, participation in self-help and educational activities and noted that petitioner was making progress from a “psychological perspective.” (Exhibit C, p. 60-61.) The Board recommended that petitioner continue self-help and therapy “to continue to make progress” “to the extent that he will be able to face, understand, and cope with stressful situations in a nondestructive manner.” (Exhibit C, p. 61.) The Board further recommended that petitioner: (1) remain disciplinary free, (2) continue to explore his culpability in the crime, (3) participate in self-help and therapy, and (4) participate in other positive types of programs. (Exhibit C, p. 62.)

VII

On February 8, 2006, petitioner, after successfully completing the recommendations of the prior Boards, appeared for his second subsequent parole consideration hearing (third actual hearing). (Exhibit A.) Despite petitioner’s complete compliance with the requests and suggestions of the Board, the Board

again found petitioner unsuitable for parole. The Board also found that it would not be "reasonable to expect that parole would be granted at a hearing during the following two years." (Exhibit A, p. 63.) The Board found that petitioner would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. (Exhibit A.) In support of its finding, the Board concluded that "the offense was carried out in a dispassionate and calculated manner in that it was a confrontation between gang members preplanned by lying in wait for the victim as he walked home." The Board continued, "The offense was carried out in a manner demonstrating exceptionally callous disregard for human suffering, disregard for public safety in that it occurred near a school and there was a clear opportunity for you to cease but you continued." (Exhibit A, p. 61.) The Board commended petitioner for having "a relatively criminal free background" and "a history of stable relationships, including your family support." The Board added:

As to your institutional behavior you have programmed commendably, your education includes 41 units towards you [sic] AA Degree and continuing involvement with college enrollment including your current independent study through Coast Line Community College. We also have read into the record a very reputable list of vocational achievements including automotive refinishing and upholstery, forklift operator, salesmanship and other vocational work. You have participated in self-help and therapy, well self-help consistently ranging from Anger Management, the Teddy Bear Drive, Feed the Children, Buddhist ordination into Buddhist studies, the Impact Program, Key to Fatherhood, The Muslim Chapel, and you have assisted in inmate education. As to misconduct, you have zero 115's, you have two minor 128A's, the last in 2000 for window covering. As to your psychological report, the report that is dated January 23, 2002, the last we have by Doctor

Saindon does in general support release. And I quote, this man has spent ten years in prison and that is at the time of this psychological report, I would recommend should he be paroled abstinence from all alcohol or use of any controlled substance, he should be relocated so that he is near his family, she should make frequent reports to his parole officer concerning his vocational progress and goals. And due to his family's commitment to supporting him upon his release, his projected level of success in the community if granted a date for parole is seen at this time to be better than average. You also have made outstanding parole plans. You have viable residential plans in the last county of legal residence and I refer to the record for the documentation we have received. You also have acceptable employment plans with established businesses owned by your relatives who are assuring you of jobs. (Exhibit A, pgs. 62-63.)

Despite all of the evidence supporting a granting of parole, the Board found petitioner unsuitable for a grant of parole based solely on the commitment offense, including the nature of the offense and the trivial motive for the offense. (Exhibit A, pgs. 60-65.) The Board expressed some concern about petitioner's rendition of the claim and his denial that he knew anyone was armed with a firearm and found that petitioner's version "minimized" his role and showed "lack of insight" into the "causative factors" of the crime. (Exhibit A, p. 65.) The Board again recommended that petitioner: (1) "get self-help," (2) stay disciplinary free, (3) get therapy and (4) continue his educational and vocational development. (Exhibit A, pgs. 64-65.)

VIII

Petitioner alleges that there was no evidence to support the Board's finding that he poses a *current unreasonable* risk if released. In fact, all current, reliable

evidence presented to the Board shows that petitioner poses no risk if released. Petitioner further alleges that the Parole Board violated petitioner's statutory rights and his Fifth and Fourteenth Amendment due process rights when it refused to grant petitioner a parole date despite any evidence supporting a finding that petitioner posed an unreasonable risk of harm. Furthermore, his continued confinement constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution. Petitioner was only 19 years old at the time of the commitment offense and had only one prior contact with law enforcement wherein he was found in possession of rock cocaine and was diverted pursuant to Penal Code section 1000. Petitioner has spent more than twelve years in state prison and is currently 33 years old. While incarcerated, he has suffered no 115's, has engaged in no acts of violence and has shown no propensity toward future criminality. Petitioner's offense was the direct result of immaturity and his involvement with a group of wanna-be gangsters. As the psychologist who evaluated petitioner noted, petitioner has gained insight into "the negative aspects of gang involvement" and has remorse for this actions. Petitioner's role in the offense was minimal and he was not the direct perpetrator of the murder, although culpable as an aider and abettor under the natural and probable consequences theory. Petitioner had no prior history of violence. Contrary to the Board's finding, nothing about petitioner or his offense supports a finding that he poses *a current unreasonable risk* to society if released from

prison.

IX

Petitioner further alleges that the Board's finding that the offense was cruel, callous and carried out in a dispassionate manner, ignores the fact that all second degree murders are, by definition, cruel, callous and dispassionate. Since a second degree murder conviction by definition is the unlawful killing of a human being with malice aforethought, it is necessarily cruel and dispassionate. Taking the life of another for an insignificant reason is by definition cruel, callous and dispassionate. Because every second degree murder is cruel, callous and dispassionate, such a finding by the Board is insufficient to overcome the statutory command that parole must normally be given.

Petitioner submits that, contrary to the Board's finding, nothing about his commitment offense is more than minimally necessary to convict him of the life offense for which he is confined, namely, second degree murder. Petitioner was tried and convicted as an aider and abettor. (Exhibit D: Letter from Counsel Donald C. Rubright.) Although there was evidence that petitioner knew one of his friends had a gun in the vehicle, there was no evidence that there was a plan for the accomplice to use the gun. In fact, there was no evidence that petitioner aided and abetted the shooter in any manner. (Exhibit D.) Rather, the record demonstrates that petitioner was convicted under the natural and probable consequences doctrine in that he aided and abetted the fight which led to one

member of his group impulsively deciding to retrieve the gun and shoot the victim. (Exhibit D.) There was nothing about petitioner's offense to indicate that it was particularly cruel or egregious. Rather, it was a typical second degree murder. Furthermore, petitioner's involvement was minimal in nature. Although still liable for the murder under an aiding and abetting and derivative liability theory, petitioner was not the direct perpetrator of the shooting. Even if petitioner's conduct is greater than that minimally required for a second degree murder, it is insufficient to support a finding that petitioner *currently poses* an unreasonable risk to society if released from prison. The Board erred in finding that the circumstances of the offense were sufficient to support a finding that petitioner poses an "unreasonable risk to society" if released from prison. There is nothing about petitioner's commitment offense which supports an inference that as a result of his offense, he *currently poses an unreasonable risk to society* if released.

X

Petitioner further alleges that the Board's finding that petitioner "hasn't developed the insight that he needs into the causative factors of this crime," is without support. All of the current evidence before the Board affirmatively demonstrates that petitioner accepts full responsibility for his actions and understands the causative factors which led to his participation in the life offense. Petitioner understands how his participation in the underlying felony facilitated his co-defendant's commission of the murder and how his life choices led to his

involvement in the offense. The Board's decision to the contrary is without merit.

None of the psychological staff indicated or recommended that petitioner needed or required additional self-help or therapy *prior* to being released from prison in order to gain insight into the causative factors which led to his involvement in the life offense. Rather, the available evidence shows that petitioner has "insight into the negative aspects of gang involvement" and has "remorse for his actions." (Exhibit E: BPT Mental Health Evaluation, p. 5.) Dr. C. Saindon, Ph.D., who drafted the mental health evaluation opined that petitioner "is competent and responsible for his behavior" and "does not have a mental health disorder which would necessitate treatment either during his incarceration period or following parole." (Exhibit E.) Saindon found that petitioner "was open in his conversation and emphasized throughout the interview his recognition that gang affiliation had only resulted in injury to himself and to those around him." (Exhibit E, p. 4.) Saindon further found that petitioner "showed significant insight into his commitment offense . . ." (Exhibit E, p. 4.) There was no evidence to support the Board's finding that petitioner lacks insight into the commitment offense or requires additional self-help or therapy to understand the causative factors which led to the commitment offense. Petitioner's version of the offense is consistent with the evidence before the Board. Petitioner was convicted of second degree murder under an aider and abettor theory and the natural and probable consequences doctrine. Petitioner has always accepted responsibility for his role

in the offense and appreciates how his involvement in the underlying offense facilitated his co-defendant's actions wherein he retrieved a gun and shot the victim who was engaged in a fight with petitioner and others. The Board's conclusion that petitioner requires additional therapy to understand the causative factors of his life offense is with wholly without support.

XI

Petitioner did not file an administrative appeal because on April 15, 2004, Title 15 of the California Code of Regulations sections 2050 and 2051 were repealed and the administrative appeals process was abolished.

XII

On August 18, 2006, petitioner filed a Petition for Writ of Habeas Corpus in the Superior Court of California for the County of Orange. On August 31, 2006, the Superior Court denied the writ finding that the BPH's denial was authorized by Penal Code section 3041, subdivision (b). (Exhibit J: Denial of the Superior Court.) Citing *In re Dannenberg, supra*, at 1071, the court concluded that the BPH was not required to consider the factors set forth in California Code regulations, title 15, section 2402. (Exhibit J.) The court reasoned that in petitioner's case the BPH pointed to the gang-related nature of the offense, a factor beyond the minimum elements of second degree murder. The Superior Court's decision, ignored the claims made in petitioner's writ. The court failed to address petitioner's claim that denial of parole based solely on the unchanging factor of the

commitment offense violated the constitutional prohibition against cruel and unusual punishment and instead simply recites the analysis contained in *Dannenberg* without an examination of the constitutionality of the far reaching effects of this case and its application to cases such as petitioner's. The court failed to explain the reasoning behind the considerations of elements unrelated to the offense for which petitioner has been committed and instead blindly followed the reasoning of the BPH.

Petitioner filed a new writ in the Court of Appeal, Fourth Appellate District, Division Three (Case No. G037732). On November 9, 2006, the Court denied the petition without comment. (Exhibit K: Denial by the Court of Appeal.)

XIII

Petitioner has no other plain or speedy remedy to address the issues set forth in the instant petition.

XIV

No other applications or motions have been filed in regard to the matters complained of herein. This petition is addressed to this Court's original habeas corpus jurisdiction.

XV

WHEREFORE, petitioner prays that this Court:

- A. Issue its writ of habeas corpus or Order To Show Cause;
- B. Conduct an evidentiary hearing wherein petitioner can obtain

additional evidence in support of his petition for writ of habeas;

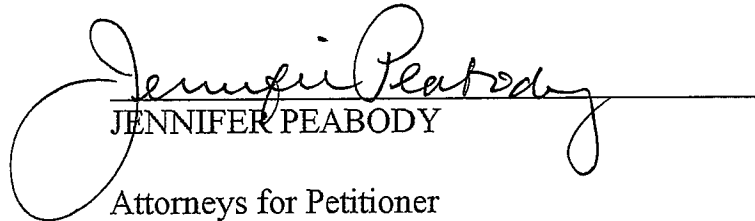
C. After a full hearing on the matter, grant petitioner's petition for writ of habeas corpus and issue an order directing the Board of Prison Terms to hold a new parole suitability hearing consistent with the standards set forth in *In re Rosenkrantz* (2002) 29 Cal.4th 616, 625-626, 656-657 and *In re Dannenberg* (2005) 34 Cal.4th 1061;

D. Grant such other relief as this Court deems necessary and proper; or

Dated: December 6, 2006

Respectfully submitted,

MARILEE MARSHALL & ASSOCIATES, INC.


JENNIFER PEABODY
Attorneys for Petitioner

VERIFICATION

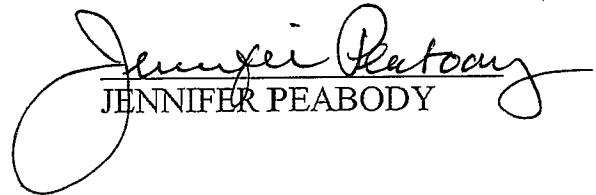
I the undersigned say:

I am the attorney for petitioner in this action; petitioner is in custody and restrained of his liberty at this time in a county other than that in which I maintain my office. For these reasons, I am making this verification on petitioner's behalf. I have read the foregoing petition and know the contents thereof, which are based upon the records of the Superior Court of Alameda County, the records of the Department of Corrections, and the exhibits attached hereto.

The above document is true of my own knowledge, except as to matters that are stated on my information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing facts and allegations in the petition are true and correct.

Executed at Los Angeles, California, this 6th day of December, 2006.


JENNIFER PEABODY

record and thus is devoid of a factual basis, the court should grant the prisoner's petition for writ of habeas corpus and should order the Board to vacate its decision denying parole and thereafter to proceed in accordance with due process of law." (*In re Scott* (2004) 119 Cal.App.4th 871.) "When the supported factors could justify denying parole, but it is not clear that the Board would have reached this conclusion," "the appropriate remedy is to direct the Board to reconsider the prisoner's parole suitability in accordance with the discretion allowed by law." (*Id.*)

II

THE PAROLE BOARD'S DECISION WAS NOT SUPPORTED BY ANY EVIDENCE AND RESULTED IN A DEPRIVATION OF PETITIONER'S FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS

A. The Applicable Law

Under California law, a life prisoner *must be* paroled when his or her release would not pose a danger to the public. (Pen. Code § 3041, subd. (b).) Penal Code section 3041 confers upon the Board of Prison Terms its authority and its duty to determine eligibility for parole. That section provides that "[o]ne year prior to the inmates minimum eligible parole release date a panel consisting of at least two commissioners of the Board of Prison Terms . . . shall normally set a parole release date. . ." (Pen. Code § 3041, subd. (a).) This requirement that normally a parole release date shall be set is made subject to explicit statutory

criteria in subdivision (b) of section 3041. Subdivision (b) provides,

The panel or board *shall* set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting.

Matters to be considered by the Board of Prison Terms in making a parole suitability include: The circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special circumstances under which the prisoner may safely be released to the community, and any other information which bears on the prisoner's suitability for release. (Cal. Code Regs., tit. 15, §2402, subd. (b).) Subdivision (c) of Title 15 section 2402 sets forth six nonexclusive circumstances tending to show unsuitability, "the relevant importance of which is left to the judgment of the Board." (*In re Scott, supra*, 119 Cal.App.4th 871.) The factors showing unsuitability include (1) the commitment offense, (2) a previous record of violence, (3) unstable social history, (4) sadistic sexual offenses, (5) psychological factors, and (6) institutional behavior. (Cal. Code Regs. tit. 15 § 2402, subd. (c).) Subdivision (d), on the other hand, identifies nine circumstances tending to show

suitability for release. The circumstances showing suitability include: (1) no juvenile record, (2) stable social history, (3) signs of remorse, (4) motivation for the crime, (5) battered woman's syndrome, (6) lack of criminal history, (7) age, (8) understanding and plans for the future, and (9) institutional behavior. (Cal. Code Regs. tit. 15 § 2402, subd. (d).) Neither the Board nor the Governor may deny parole to petitioner unless he currently poses "an unreasonable risk of danger to society if released from prison." (Cal. Code Regs. (hereinafter "CCR"), tit. 15, § 2402, subd. (a); See also, Cal. Const., Art. V, § 8, subd. (b).) Due process requires the Board's decision "reflect an individualized consideration of the specialized criteria." (*In re Rosenkrantz*, *supra*, 29 Cal.4th at 677.) The Parole Board's decision to deny parole will not be disturbed if supported by "some evidence" and based upon the factors set forth in Penal Code section 3041, subdivision (b). (*In re Rosenkrantz*, *supra*, 29 Cal.4th at 676-677; *In re Capistran* (2003) 107 Cal.App.4th 1299.) In the instant case, there was no evidence to support the Board's decision.

The Fourteenth Amendment provides that no state shall deprive any person of life, liberty or property without due process of law. (U.S. Const., Amend. XIV, § 1.) Federal courts examine questions of procedural due process in two steps. First, the court ascertains whether there is a liberty or property interest that was interfered with by the state. Second, if there is such an interest, the courts must determine if the procedures attendant upon a deprivation of that interest were

constitutionally sufficient. (*Board of Regents of State Colleges v. Roth* (1972) 408 U.S. 564, 571 [92 S.Ct. 2701, 33 L.Ed.2d 548].)

The Supreme Court in *Greenholtz v. Inmates of Nebraska Penal* (1979) 442 U.S. 1, 7, 11-12 [99 S.Ct. 2100, 60 L.Ed.2d 668] and *Board of Pardons v. Allen* (1987) 482 U.S. 369, 373 [107 S.Ct. 2415, 96 L.Ed.2d 303] established that:

while there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence, a state's statutory scheme, if it uses mandatory language, creates a presumption that parole release will be granted when or unless certain designated findings are made, and thereby give rise to a constitutional liberty interest.

The Ninth Circuit Court of Appeals in *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895 and *Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910 examined the parole scheme in California, namely, Penal Code section 3041, and concluded that language is mandatory and thus, "creates a presumption that parole release will be granted" unless the statutorially defined determinations are made. These courts found that the California parole scheme uses mandatory language and is largely parallel to the schemes found in *Greenholtz* and *Allen*. (*McQuillion v. Duncan, supra*, 306 F.3d at 901, *Biggs v. Terhune, supra*, 334 F.3d at 914.) Accordingly, the Courts found that "it is clear that 'California's parole scheme gives rise to a cognizable liberty interest in release on parole.'" (*McQuillion v. Duncan, supra*, 306 F.3d at 902, *Biggs v. Terhune, supra*, 334 F.3d at 914.) "The liberty interest is created, not upon the grant of a parole date, but upon the incarceration of the

inmate.” (*Id.* at 915.)

Because the California parole scheme vests in every inmate, a constitutionally protected liberty interest, the court must look to the second step in the procedural due process analysis to see if adequate procedural protections were afforded. (See, *Biggs v. Terhune*, *supra*, 334 F.3d at 915.) “In the parole context, the requirements of due process are satisfied if “some evidence” supports the decision.” (*McQuillion v. Duncan*, *supra*, 306 F.3d at 304.) “Additionally, the evidence underlying the board’s decision must have some *indicia of reliability*.” (*Biggs v. Terhune*, *supra*, 334 F.3d at 915 [emphasis added].) “To ensure that a state-created parole scheme serves the public interest purposes of rehabilitation and deterrence, the Parole Board must be cognizant not only of the factors required by state statute to be considered, but also the concepts embodied in the Constitution requiring due process of law.” (*Id.* citing *Greenholtz v. Inmates*, *supra*, 442 U.S. at 7-8.) In California, in order to comply with the due process requirements of the state and federal constitution, the decision to deny parole must be based on (1) some evidence; (2) of the existence of the factors specified by the statutory framework; (3) that is relevant and reliable and (4) that suggests an inmate poses a *current unreasonable* threat to public safety. (Title 15 CCR § 2402, subds. (a)(b); See, *Jancsek v. Oregon Bd. of Parole* (9th Cir. 1987) 833 F.2d 1389, 1390.) In the instant case, there was no reliable evidence before the Parole Board indicating that petitioner poses a *current unreasonable risk* to society if

released from custody. Accordingly, the Board's failure to grant petitioner a parole release date violated petitioner's Fifth and Fourteenth Amendment due process rights.

B. There is No Evidence to Support the Board's Decision that Petitioner Posed an Unreasonable Risk of Danger to Society if Released From Prison

At petitioner's second subsequent hearing, the Board again determined that petitioner would pose a current unreasonable risk to society if released from prison. (Exhibit A.) In making this determination, the Board found that (1) the offense was carried out in a manner demonstrating a callous disregard for human suffering and a disregard for public safety, (2) the motive for the offense was "very trivial" and (3) petitioner's statement, "I thought I was going to a fist fight," "minimizes the gravity of the crime" and minimizes petitioner's involvement in the offense. (Exhibit A, pgs. 61-64.) The Board however, commended petitioner for having "a relatively criminal free background," "a history of stable relationships, including your family support," programming "commendably," upgrading educationally, "a very reputable list of vocational achievements," consistent "participation in self-help," total lack of disciplinary violations and "outstanding parole plans." (Exhibit A, pgs. 62-63.) Despite all of petitioner's accomplishments and achievements, the Board inexplicably found that the positive factors showing suitability do not outweigh the factors showing unsuitability. The

Board then recommended that petitioner: (1) “get self-help,” (2) “stay disciplinary free,” (3) “get therapy,” and (4) continue his educational and vocational development.” (Exhibit A, pgs. 64-65.) The Board’s decision was unsupported by any evidence in the record. Rather, all competent evidence, including petitioner’s Board Reports and Psychological Reports, overwhelmingly established that petitioner does not pose an unreasonable risk to society if released from prison. According, habeas relief is warranted.

The current evidence presented to the Board shows that petitioner does not pose an unreasonable risk of danger to the public or a threat to the public safety. Petitioner’s Mental Health Evaluation report authored by C. Saindon, Ph.D. on January 23, 2002, was supportive of release. Dr. Saindon concluded, “if released to the community, [petitioner’s] violence potential is estimated to be less than the average citizen in the community, given his insight, his demonstrated ability to stay out of trouble, his successful development of plans upon release, and the support of his family.” (Exhibit E, p. 5.)

Saindon’s opinion is consistent with the findings of petitioner’s correctional counselors. All of petitioner’s correctional counselors have been supportive of release on parole. While his current Life Prisoner Evaluation Report does not contain a risk assessment due to new rules by the Board, the report is nonetheless supportive of release. In the section titled “Assessment,” petitioner’s counselor opined,

Inmate Ngo does not have any prior record of criminal conduct (considering the recency and frequency of prior crimes) and the circumstances of the instant offense, he does not appear to be criminally minded and has a good insight into himself. He has been able to maintain himself relatively disciplinary free (of serious rules violations) since 2/12/00 [sic]. In 9/12/97 and 2/27/97, he acquired two (2) Certificates of Completion, Vocational Automotive Refinishing and Upholstery, respectively. In addition, he is in the process of acquiring college credits via correspondence from Coastline Community College with the hope that said credits will be transferable to a university and eventually obtain a degree in Biology. Finally, he has achieved realistic parole plans. (Exhibit F: Life Prisoner Evaluation August 2005, pgs. 2-3.)

In the Life Prisoner Evaluation Report prepared for the May 2004 hearing, petitioner's correctional counselor concluded, "Considering the commitment offense, minimal prior arrest record and good prison adjustment, the writer believes that Ngo would probably pose a low degree of threat to the public at this time, if release[d] from prison." (Exhibit G: Life Prisoner Evaluation May, 2004.) In reaching this decision, CCI Rubio relied on petitioner's immaturity at the time of the offense, being easily influenced by his peers and his limited criminal history and lack of violence in custody. (Exhibit G, p. 3.) Rubio further found the crime to be "episodic in nature." (Exhibit G, p. 3.) In April 2002, petitioner's counselor was also supportive of parole. CCI Rubio found that petitioner would probably pose a "moderate to low degree of threat to the public at this time, if released from prison." (Exhibit H: Life Prisoner Evaluation April, 2002.)

The information before the Board overwhelmingly established that

petitioner does not pose an unreasonable risk to society if released from prison. The mental health professional who has evaluated petitioner and make a risk assessment has concluded that petitioner posed a low risk to society if released from prison. Furthermore, the correctional counselors have determined that petitioner poses a low risk if released. These experienced individuals have unanimously concluded that petitioner does not pose an "unreasonable risk" to society if released from prison. These conclusions are supported by petitioner's age, his new-found maturity, the "episodic" nature of his offense, his institutional adjustment and his involvement in NA and other self-help and therapy programs. Petitioner is currently 33 years old and has gained the maturity he was lacking at the time of his commitment offense when he was only 19 years old. He has gained insight into the negative impact his involvement with wanna-be gangsters had on his life, the victim's life and society in general. He has been incarcerated since 1993. While incarcerated, he has suffered no 115's, has engaged in no acts of violence and has shown no propensity toward future criminality. Petitioner's offense, as recognized by the experts evaluating petitioner, was episodic in nature, and the result of immaturity and negative peer influences. (Exhibits E, F, G, H.) Nothing about petitioner or his offense supports a finding that he poses *a current unreasonable risk* to society if released from prison.

Furthermore, there is no current evidence to support a finding that petitioner requires additional self-help or therapy to gain further insight into his offense in

order to be able to ensure that he no longer poses a danger to society. Rather, all the evidence before the Board shows that petitioner has participated in all of the available self-help programs and no longer requires self-help or therapy in order to ensure that he does not pose an unreasonable risk to society if released. As Dr. Saindon found, petitioner has "insight into the negative aspects of gang involvement." (Exhibit E, p. 5.) In concluding that petitioner poses less potential for violence than the average citizen, Saindon relied, in part, on petitioner's "insight." (Exhibit E, p. 5.) Similarly, when petitioner was evaluated by Dr. C. Schroeder, Ph.D. in December, 1996, Dr. Schroeder noted that at the time of the offense, petitioner had very limited insight into the causative factors which led to the offense. However, Schroeder noted that now, "In hindsight, he sees that he perhaps could have stopped the incident and now has great empathy and remorse for the family of the victim." (Exhibit I, p. 2.) Schroeder further noted that petitioner is now "able to think before acting." (Exhibit I, p. 2.) Petitioner has always accepted responsibility for his role in the commitment offense and his version of the offense is consistent with the prosecution's theory and the evidence presented against petitioner. Petitioner has always stated that he did not intend to kill the victim. This lack of intent is consistent with the prosecution's theory of the case. Petitioner was tried as an aider and abettor. The jury was instructed with the natural and probable consequences doctrine which permitted the jury to find that petitioner was guilty of second degree murder if he aided and abetted the fist

fight and that the shooting was a natural and probable consequence of aiding and abetting the fight. (Exhibit D.) Thus, there was no requirement that petitioner form the specific intent to kill or be aware that anyone else formed the specific intent to kill.¹ (Exhibit D.) The Board's finding that petitioner lacks insight into the commission of his life offense is without any support and is based solely on ignorance of applicable California law governing aiding and abetting and the natural and probable consequences theory of second degree murder. There is no evidence to support a finding that petitioner lacks insight into the life offense and requires additional self-help to gain such insight.

In the instant case, the record is devoid of any evidence that of aggravated

1

Under the natural and probable consequences doctrine, "... the aider and abettor in a proper case is not only guilty of the particular crime that to his knowledge his confederates are contemplating committing, but he is also liable for the natural and reasonable consequences of any act that he knowingly aided or encouraged." (*People v. Croy* (1985) 41 Cal.3d 1, 12, fn. 5; *People v. Prettyman* (1996) 14 Cal.4th 248.) Thus, the pivotal question is, "whether the collateral criminal act was the ordinary and probable effect of the common design or was a fresh and independent product of the mind of one of the participants, outside of, or foreign to, the common design." (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 citing *People v. Kaufman* (1907) 152 Cal. 331, 337; See also, *People v. Durham* (1969) 70 Cal.2d 171, 182-183.) Each juror must be convinced, beyond a reasonable doubt, that the defendant aided and abetted the commission of a criminal act, and that the offense actually committed was a natural and probable consequence of that act. (*People v. Prettyman, supra*, 14 Cal.4th at 268.) In order to determine whether a particular criminal act was a natural and probable consequence of another criminal act aided and abetted, a jury must determine whether, "under all of the circumstances presented, a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted by the defendant." (*People v. Nguyen, supra*, 21 Cal.App.4th at 531 citing, *People v. Woods* (1992) 8 Cal.App.4th 1570, 1587; See, *People v. Mendoza* (1998) 18 Cal.4th 1114, 1133; *People v. Price* (1991) 1 Cal.4th 324, 443.)

conduct reflecting an exceptionally callous disregard for human suffering. Rather, the offense was a routine second degree gang murder premised on an aiding and abetting theory and the natural and probable consequences doctrine. Petitioner was not the shooter and there was no evidence that he intended for the victim to be shot or had knowledge that the shooter had armed himself with a firearm during the fight. Rather, the testimony was that petitioner aided and abetted a fight which led to the commission of murder. As petitioner's counselor noted, the crime was "episodic" in nature and was not indicative of petitioner's character. (Exhibits G and H.) Furthermore, whether a particular second degree murder is exceptionally callous or especially heinous, atrocious or cruel is relevant only to inform a judgment that the inmate poses a current unreasonable threat to public safety. The "commitment offense" subfactors set forth in section 2402, subdivision (c), subsection (1) speak to this question- they focus on past acts as predictors of an inmate's future dangerousness, and are not meant to simply prolong punishment. Nothing about petitioner's commitment offense supports an inference that petitioner *currently* poses an unreasonable risk to society if released. Following *Dannenberg*, the First Appellate District, Division Two in *In re Elkins* (2006) 144 Cal.App.4th 475, stated, "The commitment offense can negate suitability only if circumstances of the crime reliably established by evidence in the record rationally indicate that the offender will present an unreasonable risk to public safety if released from prison. Yet, the predictive value of the commitment offense may be

very questionable after a long period of time.” Here, there is nothing about petitioner’s commitment offense which supports an inference that he currently poses an unreasonable risk to society.

Contrary to the finding of the Board, there is no evidence to support a finding that petitioner’s commitment offense supports an inference that he currently poses an unreasonable risk to society if released. The Board’s conclusion that petitioner remains a danger to society, is so lacking in any medical, psychological or behavioral evidentiary support that it is arbitrary and capricious. Petitioner’s continued confinement absent some evidence showing that he currently poses an unreasonable risk to society violates the Fifth and Fourteenth Amendments of the United State Constitution. Petitioner should be given a parole release date.

C. Reliance Solely on the Facts and Characterization of Petitioner’s Commitment Offense and Petitioner’s Prior Record to Deny Parole Resulted in a Violation of the Eighth and Fourteenth Amendment Prohibition Against Cruel and Unusual Punishment.

Even assuming that petitioner’s offense is “cruel, callous or dispassionate,” over and above that necessarily implied in second degree murder, the crime fails to support a finding that petitioner currently poses an unreasonable risk to society if released. Petitioner was only 19 years old at the time he committed the life offense and, as discussed thoroughly above, petitioner was convicted as an aider

and abettor. He has been in state prison for 13 years. While in custody, he has stayed away from trouble and/or violence and has been without any 115's during his entire term. The crime, as discussed above, was episodic in nature and was not indicative of his character. Petitioner was young and susceptible to negative peer influences. Other than the life offense, petitioner had no prior violent criminal history. His only other contact with law enforcement was when he was arrested for possessing cocaine. As a result of his arrest, petitioner was diverted pursuant to Penal Code section 1000. Petitioner has obtained treatment in prison for his drug use and has remained clean throughout his incarceration. Nothing about petitioner's commitment offense supports an inference that he currently poses an unreasonable risk to society. As discussed above, all of the available evidence, including the professional opinions of the mental health professionals who evaluated petitioner and petitioner's correctional counselors, indicates that despite the facts of petitioner's commitment offense, petitioner does not pose an unreasonable risk to society if released from custody.

Petitioner recognizes that in *In re Danneberg*, *supra*, 34 Cal.4th at 1071, the California Supreme Court concluded that "the Board in exercising its traditional broad discretion, may protect public safety *in each discrete case* by considering the dangerous implications of a life-maximum prisoner's crime individually." [emphasis in original.] The court, however, added, "Of course, no inmate may be imprisoned beyond a period that is constitutionally proportionate to

the commitment offense or offenses.” (*Id.*) In the instant case, continual reliance by the Board on the facts and characterization of petitioner’s commitment offense to support a current finding of dangerousness violates the state and federal prohibition against sentences which are cruel and unusual. When the facts of petitioner’s offense are considered in relation to the time served and performance in prison, continual confinement based solely on the nature of petitioner’s offense and prior criminal history is constitutionally excessive.

The facts of petitioner’s commitment offense will never change. However, it does not necessarily follow that petitioner will always remain a danger to society, especially in light of the overwhelming evidence that petitioner no longer poses a danger to society. In the instant case, there is no evidence to support the Board’s finding that the facts of petitioner’s commitment offense render him a danger to society if released from custody. Petitioner has served more than 13 years in custody. Petitioner’s rehabilitation, as documented in the psychological evaluations and counselor’s report, clearly establishes that petitioner poses no danger to society if released. In the instant case, reliance on the facts of petitioner’s commitment offense and his prior record are insufficient to justify the denial of parole. Petitioner’s continued confinement based solely such immutable factors violates the state and federal prohibition against sentences which are cruel and unusual.

III


CONCLUSION

For all of the foregoing reasons, this Court should grant writ relief and direct the Board of Prison Terms to conduct a parole eligibility hearing that complies with the requirements in *In re Rosenkrantz, supra*, 29 Cal.4th at 625-626, 656-657 and *In re Dannenberg, supra*, 34 Cal.4th 1061.

Dated: December 6, 2006

Respectfully submitted,

MARILEE MARSHALL & ASSOCIATES, INC.

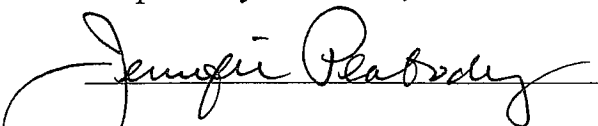

JENNIFER PEABODY
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

The text of this brief consists of 7756 words as counted by the WordPerfect version 8 word processing program used to generate this brief.

Dated: December 6, 2006

Respectfully submitted,



JENNIFER PEABODY

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

I am over eighteen (18) years of age, and not a party to the within cause; my business address is 523 West Sixth Street, Suite 1109, Los Angeles, CA. 90014. That on December 6, 2006, I served a copy of the within:

PETITION FOR WRIT OF HABEAS CORPUS

On the interested parties by placing them in an envelope (or envelopes) addressed respectively as follows:

Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

Court of Appeal
Fourth Appellate District / Division 3
925 N. Spurgeon Street
Santa Ana, CA 92701-3700

Mr. Sieu Phong Ngo
J-07024/ B-wing 319-up
CTF- Soledad
P.O. Box 689
Soledad, CA 93960-0689

Each said envelope was then, on December 6, 2006, sealed and deposited in the United States mail at Los Angeles, California, the county in which I maintain my office, with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 6, 2006, at Los Angeles, California.


SHANNON CALLAHAN

ORIGINAL

S148684

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

SIEU NGO

On Habeas Corpus

Case No. _____

SUPREME COURT
FILED

DEC - 7 2006

Frederick K. Ohlrich, Clerk

DEPUTY

FROM THE JUDGMENT OF THE SUPERIOR COURT OF ORANGE COUNTY, THE
HONORABLE KAZUHARU MAKINO, JUDGE PRESIDING

**EXHIBITS IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

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DEC - 7 2006

Attorneys for Petitioner

CLERK SUPREME COURT
LOS ANGELES

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EXHIBIT A

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number J-07024

SIEU NGO)
_____)

**INMATE
COPY**

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

FEBRUARY 8, 2006

9:58 A.M.

PANEL PRESENT:

Ms. Sandra Bryson, Presiding Commissioner
Mr. Doug Filangeri, Deputy Commissioner

OTHERS PRESENT:

Mr. Sieu Ngo, Inmate
Ms. Tara Rutledge, Attorney for Inmate
Mr. Tom Crofoot, Deputy District Attorney
Correctional Officers Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No See Review of Hearing
_____ Yes Transcript Memorandum

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--oOo--

3

1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER FILANGERI: We're on
3 record.

4 PRESIDING COMMISSIONER BRYSON: This is a
5 Subsequent Parole Consideration Hearing for Sieu
6 Ngo CDC number J-07024. Today's date is
7 February 8th, 2006 and the time is 9:58 A.M. We
8 are located at Correction Training Facility in
9 Soledad. The inmate was received on February
10 1st, 1994 committed from Orange County. The
11 life term began February 1st, 1994. The
12 inmate's minimum eligible parole date is May
13 24th, 2003. The controlling offense for which
14 the inmate is committed is set forth in case
15 number C199109 charging in count one a violation
16 of Penal Code 187 murder second enhanced with a
17 weapon Penal Code 1222A sub one, armed with a
18 firearm to wit a 22 caliber pistol for which the
19 inmate received a term of 15 years to life plus
20 one year. This hearing is being recorded. For
21 the purpose of voice identification each of us
22 will state our first and last name, spelling the
23 last name. When it is your turn Sir, after you
24 spell your last name please state your CDC
25 number. I will start and then go to my left,
26 Sandra Bryson B-R-Y-S-O-N Commissioner Board of
27 Parole Hearings

1 DEPUTY COMMISSIONER FILANGERI: Deputy
2 Commissioner Doug Filangeri F-I-L-A-N-G-E-R-I.

3 DEPUTY DISTRICT ATTORNEY CROFOOT: Tom
4 Crofoot C-R-O-F-O-O-T Orange County District
5 Attorney's Office.

6 ATTORNEY RUTLEDGE: Tara E. Rutledge R-U-
7 T-L-E-D-G-E Attorney for Mr. Ngo.

8 INMATE NGO: Inmate Ngo N-G-O first name
9 Sieu S-I-E-U middle name Phong P-H-O-N-G CDC
10 number J-07024.

11 PRESIDING COMMISSIONER BRYSON: I note
12 for the record that we have two correctional
13 peace officers in the room who are here for
14 security purposes. Commissioner Filangeri is
15 there any confidential material in the file and
16 if so will it be used today?

17 DEPUTY COMMISSIONER FILANGERI: There is
18 none we will be using today.

19 PRESIDING COMMISSIONER BRYSON: All right
20 I passed the hearing checklist marked exhibit
21 one to your counsel and I believe, do you have
22 that District Attorney?

23 DEPUTY DISTRICT ATTORNEY CROFOOT: I have
24 it as well.

25 PRESIDING COMMISSIONER BRYSON: All right
26 and confirming that the District Attorney has
27 the documentation

5

1 DEPUTY DISTRICT ATTORNEY CROFOOT: I have
2 thank you.

3 PRESIDING COMMISSIONER BRYSON: And
4 counsel you have the documentation.

5 ATTORNEY RUTLEDGE: Yes.

6 PRESIDING COMMISSIONER BRYSON: Thank
7 you. Are there any additional documents to be
8 submitted counsel?

9 ATTORNEY RUTLEDGE: No, just that the
10 packet that we provided dated February the 8th I
11 believe --

12 PRESIDING COMMISSIONER BRYSON: We do
13 have this.

14 ATTORNEY RUTLEDGE: Okay other than that
15 we have nothing to submit.

16 DEPUTY DISTRICT ATTORNEY CROFOOT: I have
17 not seen that, can you just describe it for me?

18 ATTORNEY RUTLEDGE: Sure, it's Mr. Ngo
19 has prepared sort of a, it's entitled Memorandum
20 of Evidence in Law and Support of Parole
21 Suitability where he tells the board, well, it
22 includes parole plans, what his place of
23 residence and employment, psych evaluation
24 reports, life prisoner evaluation reports,
25 includes his chronos and certificates which are
26 all in the C File, and support letters. Last I
27 checked everything in the C File, and support letters. Last I

6

1 except the first two sections. Is that correct
2 or not?

3 INMATE NGO: I don't know.

4 ATTORNEY RUTLEDGE: Everything else
5 beginning with the psych eval should -

6 INMATE NGO: Should be all in there.

7 ATTORNEY RUTLEDGE: Is all in the C File.
8 So if you want to review this I'll let you.

9 DEPUTY DISTRICT ATTORNEY CROFOOT: That's
10 fine thank you.

11 PRESIDING COMMISSIONER BRYSON: And we
12 will be going over those first two sections
13 basically here in the hearing. All right Sir,
14 today you and your attorney signed a document
15 marked exhibit two regarding ADA Accommodation
16 Hearing Procedures and Inmate's Rights. Counsel
17 do you have any comments or concerns regarding
18 the ADA Rights or the inmate's ability to
19 participate in the hearing?

20 ATTORNEY RUTLEDGE: No.

21 PRESIDING COMMISSIONER BRYSON: Are there
22 any preliminary objections?

23 ATTORNEY RUTLEDGE: No, not at this time.

24 PRESIDING COMMISSIONER BRYSON: All
25 right, will the inmate be speaking with the
26 panel?

27 ATTORNEY RUTLEDGE: Yes, I will be speaking with the panel.

1 wrote there he will be speaking to the panel in
2 all issues other than the commitment offense
3 which he spoke to the board I believe at his
4 first hearing and he notes in his Memorandum,
5 let me just quote from there, "further more I
6 have fully and freely, I confess and accept the
7 facts of my personal culpability and
8 responsibility for the life term offense." So
9 that would conclude his comments on the offense.
10 Other than that though he will discuss other
11 issues with the board.

12 **PRESIDING COMMISSIONER BRYSON:** All right
13 then Sir if you are going to address the panel
14 we will swear you in. So would you raise your
15 right hand please, do you solemnly swear or
16 affirm that the testimony you give at this
17 hearing will be the truth, the whole truth and
18 nothing but the truth?

19 **INMATE NGO:** Yes I swear.

20 **PRESIDING COMMISSIONER BRYSON:** All right
21 I will read the facts of the crime into the
22 record, information obtained from the probation
23 officer's report pages three and four. On
24 September 18th, 1992 Angel Gonzales was beaten
25 and shot to death near Fullerton High School as
26 he was walking home after school. An

1 the victim, a member of the "Fullerton's Toker's
2 Town" a Latin gang and member of "Fullerton's
3 Boyz" B-O-Y-Z an Asian gang were at a McDonald's
4 restaurant near the high school. The victim and
5 No, that's N-O Muhamed M-U-H-A-M-E-D, had a
6 confrontation with each claiming there each
7 respective gang affiliations. After this non
8 physical altercation the group of Asians which
9 at the time included Sieu Phong Ngo obtained a
10 firearm. Ngo, N-G-O, and the Asian gang members
11 returned to the school where they waited for
12 Gonzales. As he walked home he was attacked and
13 beaten. During the physical altercation the
14 victim was shot one time in the back by Usumang
15 U-S-U-M-A-N-G last M-U-H-A-M-E-D, the group of
16 five Asian gang members including Ngo N-G-O fled
17 the area after the shooting. Angel Gonzales
18 died at the scene as a result of the gun shot
19 wound. Ngo N-G-O, Jimmy Dao D-A-O and Asat Cham
20 A-S-A-T-C-H-A-M fled to the state of Washington.
21 They were subsequently apprehended there and the
22 murder weapon, a stolen 22 caliber hand gun was
23 recovered in the vehicle. All right Sir, as to
24 your pre-conviction record you have none as a
25 juvenile. We have as to your adult arrest
26 history and conviction's, we have that on March
27 30th, 1992 you were arrested by the San Gabriel

9

1 Police Department for possession of a controlled
2 substance, three pieces of rock cocaine. On May
3 7th, 1992 that was diverted pursuant to Section
4 1000 of the Penal Code. And then on September
5 22nd, 1992 you were arrested by the Olympia
6 Sherriff's Office for possession of stolen
7 property. This case was subsequently dismissed
8 and that of course ensued with the instant
9 crime. And that comports with your record here
10 so they are the same. Okay, all right, as to
11 your personal history, it's cleared also by the
12 way that you do have a strong stable family and
13 good social support. Just reviewing it and then
14 your welcome to add to it if you would like.
15 You were born in Vietnam on May 18th 1973.

16 INMATE NGO: Correct.

17 PRESIDING COMMISSIONER BRYSON: And you
18 resided in the United States since 1979 so that
19 means that you basically came here when you were
20 six years old. Is that right?

21 INMATE NGO: Correct.

22 PRESIDING COMMISSIONER BRYSON: In 1991
23 you graduated from Fullerton High School and
24 subsequently attended Fullerton Community
25 College and Pasadena City College. As to your
26 high school courses and then your subsequent
27 college courses, where were you headed?

1 professionally in both high school and college
2 as you went through?

3 INMATE NGO: Well I was trying major in
4 small business and you know hopefully start my
5 own business one day.

6 PRESIDING COMMISSIONER BRYSON: Okay, we
7 have here that you completed ten units and your
8 major was business. Were those semester units,
9 is that what that's referencing?

10 INMATE NGO: Yeah, semester.

11 PRESIDING COMMISSIONER BRYSON: All
12 right, you were employed as a telemarketer and
13 worked odd jobs. So you were working while you
14 were in college?

15 INMATE NGO: Right.

16 PRESIDING COMMISSIONER BRYSON: You were
17 employed at your family's liquor store and
18 resided with your parents. We note that you had
19 problems with substance abuse including, it says
20 controlled substances or alcohol. Would you
21 explain that a little more. First of all your
22 record is very A characteristic of your getting
23 involved in this in the first place so that's
24 where I'm trying to gain some understanding.
25 You were in a gang, or a want to be gang at the
26 time?

27 INMATE NGO: Connect

1 PRESIDING COMMISSIONER BRYSON: And what
2 go you motivated into the gang, I can't imagine
3 actually from your record?

4 INMATE NGO: Well you know as kids you
5 always you know feel like you want to belong to
6 somebody or be a part of something you know.

7 PRESIDING COMMISSIONER BRYSON: Right.

8 INMATE NGO: I mean at that time you
9 know, that's how I felt when I was a kid you
10 know, wanted to belong to something you know.
11 Never thinking something like this leads to you
12 know what happened in this instant case but you
13 know that's my mistake you know choosing the
14 wrong friends you know, not knowing any better
15 but now your know I realize what I did was you
16 know by choosing wrong friends you know can cost
17 you your life you know, ruin your life.

18 PRESIDING COMMISSIONER BRYSON: Were your
19 parents aware of your involvement with gangs and
20 or drugs?

21 INMATE NGO: At that time I don't know,
22 no they weren't aware of it you know because you
23 know I guess you know you can say I hide from
24 them or what not because like was said earlier
25 we just more like want to be gang member. We
26 just like, there was five of us we like friends
27 you know we just hang around you know do what

12

1 kids do, you know, play arcade and what not you
2 know, that's about it.

3 PRESIDING COMMISSIONER BRYSON: Were your
4 parents both employed?

5 INMATE NGO: Yes they were, we own -- at
6 that time we had a family business, a liquor
7 store.

8 PRESIDING COMMISSIONER BRYSON: Right.

9 INMATE NGO: Before that my dad you know
10 he was into making signs and stuff before we
11 purchased a liquor store. From that point on we
12 just run a liquor store, a family liquor store
13 in Anaheim.

14 PRESIDING COMMISSIONER BRYSON: You have
15 brothers and sisters?

16 INMATE NGO: I have one older brother,
17 two older sisters and one younger brother, and
18 one younger sister. There are all doing well, I
19 mean, my brothers getting married soon and they
20 all graduate, most of them graduated from
21 college and my little sister, I don't know,
22 right now I really don't know where she is
23 because of what happened to me and stuff like
24 that you know, my dad and he was passing away.

25 I don't know what happened, she came visit me
26 one time and she just moved out and I have never
27 heard from her again.

1 PRESIDING COMMISSIONER BRYSON: I see.

2 INMATE NGO: That's the only person,
3 thing I know about what -- I don't even know
4 where she is right now at this point, my little
5 sister so I would like to look for her when I
6 get out though if I'm given a second chance.

7 PRESIDING COMMISSIONER BRYSON: Okay, now
8 is your mom still living?

9 INMATE NGO: Yes my mom is still living.

10 PRESIDING COMMISSIONER BRYSON: And how
11 is she doing?

12 INMATE NGO: She's doing well.

13 PRESIDING COMMISSIONER BRYSON: Is she
14 working or is she retired?

15 INMATE NGO: Right now she's going to
16 school right now. She's trying to learn English
17 she said you know so it's a good thing to keep
18 her occupied you know because since my dad
19 passed away and she really you know had no one
20 to you know talk to so you know friends wise and
21 what not so beside family members so she's going
22 to school from what I understand.

23 PRESIDING COMMISSIONER BRYSON: All
24 right, let's go to post-conviction factors and
25 Commissioner -- do you have any questions first
26 of all relevant to the personal history?

27 PRESIDING COMMISSIONER BRYSON: All right.

1 thanks I do. Are you suggesting that your
2 sister's disappearance has something to do with
3 your imprisonment?

4 INMATE NGO: I think she was maybe
5 traumatized and I know she feel you know she's,
6 I don't know I can't personally say how she
7 feels but I think it might have a little affect
8 on her because you know she just moved away you
9 know so. My family is still looking for her so.

10 PRESIDING COMMISSIONER BRYSON: How old
11 is she now?

12 INMATE NGO: She should be about 28 right
13 now, 28, 29.

14 DEPUTY COMMISSIONER FILANGERI: So what
15 makes you think she might become traumatized?

16 INMATE NGO: At the time my dad was sick
17 and he was dying of cancer and me being in
18 prison I guess it just, she didn't want to be
19 around at that time I guess. I don't know what
20 the reason, I would like to know but I can't
21 answer that at this point right now.

22 DEPUTY COMMISSIONER FILANGERI: Well what
23 would stop me from thinking that you're just
24 trying to exploit the situation to garner some
25 sympathy from the panel members?

26 INMATE NGO: I'm not, not at all.

27 DEPUTY COMMISSIONER FILANGERI: That's

1 all the questions I have.

2 PRESIDING COMMISSIONER BRYSON: All
3 right, we'll go to post conviction factors with
4 Commissioner Filangeri.

5 DEPUTY COMMISSIONER FILANGERI: Okay
6 thanks. The purpose of this part of the hearing
7 is to detail your prison behavior since you last
8 appeared before the board. I think that was
9 August 5th, 2004 where you were denied for one.
10 That was your first Subsequent Parole
11 Consideration Hearing.

12 INMATE NGO: I was denied two years for
13 my first one and my Subsequent was one year.

14 DEPUTY COMMISSIONER FILANGERI: Right,
15 that was 2004 your first Subsequent Parole
16 Consideration Hearing resulted in a one year
17 denial.

18 INMATE NGO: Right, correct Sir.

19 DEPUTY COMMISSIONER FILANGERI: The first
20 document that I want to refer to is the
21 Correctional Counselor's Report provided by F.I.
22 DeGuzman D-E-G-U-Z-M-A-N its dated 6/16/05.
23 Under post-conviction factors the counselor
24 writes that you've remained at CTF in the
25 general population, medium A with a mandatory
26 minimum placement score of 19 although your
27 actual classification

1 a lifer without a date would have been zero.
2 The writer refers us to the post conviction
3 progress report which says that you're doing
4 independent studies through Coast Line Community
5 College. I saw six items in the C File from
6 Coast Line College about training material,
7 tests, CDs and stuff like that. Each one of
8 those items correspond to a particular course?

9 INMATE NGO: Yes, like some course
10 require you know, it's enclosed with the books
11 along which explained the program itself but
12 since we can't, we don't allow the use of
13 computers so it's pretty much pointless so I had
14 to return it you know.

15 DEPUTY COMMISSIONER FILANGERI: So if
16 they come on CD's you can't do the class?

17 INMATE NGO: No, the CD just part of the
18 curriculum but it's just basically what there
19 teachers like explaining what's in the class
20 itself.

21 DEPUTY COMMISSIONER FILANGERI: So you
22 can still do the class with the books and still
23 pass the tests?

24 INMATE NGO: Yes.

25 DEPUTY COMMISSIONER FILANGERI: You have
26 enough to do to pass the tests?

27 INMATE NGO: Yes, you have a syllabus in

1 has all the curriculum in there.

2 DEPUTY COMMISSIONER FILANGERI: Okay, I
3 saw that first item was I think dated around
4 2005, have you actually completed any of the
5 course work yet?

6 INMATE NGO: For the Coast Line, yes.

7 DEPUTY COMMISSIONER FILANGERI: Do you
8 have certificates?

9 INMATE NGO: There's no certificate but I
10 have grades which unfortunately I don't have it
11 hear but I have listed all the courses I've
12 completed. If you look -

13 DEPUTY COMMISSIONER FILANGERI: What
14 section of that is that in the packet?

15 INMATE NGO: Page seven of my Memorandum.

16 DEPUTY COMMISSIONER FILANGERI: Okay
17 current academic and self help programs and down
18 here, here it is Coast Line College.

19 INMATE NGO: Right.

20 DEPUTY COMMISSIONER FILANGERI: So you
21 have completed biology 100.

22 INMATE NGO: Correct.

23 DEPUTY COMMISSIONER FILANGERI: Business
24 110.

25 INMATE NGO: 120.

26 DEPUTY COMMISSIONER FILANGERI: I see,
27 this one says 110.

18

16

1 INMATE NGO: Oh typo.

2 DEPUTY COMMISSIONER FILANGERI: Okay,
3 counseling 105.

4 INMATE NGO: Correct.

5 DEPUTY COMMISSIONER FILANGERI:
6 Psychology 100.

7 INMATE NGO: Correct.

8 DEPUTY COMMISSIONER FILANGERI: Sociology
9 100.

10 INMATE NGO: Correct.

11 DEPUTY COMMISSIONER FILANGERI: Spanish
12 180.

13 INMATE NGO: Correct.

14 DEPUTY COMMISSIONER FILANGERI: And your
15 currently enrolled in Health 100?

16 INMATE NGO: No that's the old from a
17 previous board.

18 ATTORNEY RUTLEDGE: Here maybe this one
19 will I think, in fact this does not have the
20 typo. I didn't realize they weren't the same so
21 go right ahead.

22 DEPUTY COMMISSIONER FILANGERI: I see
23 okay. Okay this one says Business 120. Spanish
24 180, Health 100 you've completed that?

25 INMATE NGO: Yes.

26 DEPUTY COMMISSIONER FILANGERI:

27 Philosophy

19

1 INMATE NGO: Yes.

2 DEPUTY COMMISSIONER FILANGERI:

3 Communications 100.

4 INMATE NGO: Yes.

5 DEPUTY COMMISSIONER FILANGERI: Geology

6 100.

7 INMATE NGO: Yes.

8 DEPUTY COMMISSIONER FILANGERI: History

9 175.

10 INMATE NGO: Yes.

11 DEPUTY COMMISSIONER FILANGERI: Astronomy

12 100.

13 INMATE NGO: Yes.

14 DEPUTY COMMISSIONER FILANGERI: Marine

15 Science 100.

16 INMATE NGO: Correct.

17 DEPUTY COMMISSIONER FILANGERI: And your

18 currently enrolled in Humanities and Political

19 Science.

20 INMATE NGO: Correct.

21 DEPUTY COMMISSIONER FILANGERI: Okay,

22 let's see, 13 classes figuring there what, about

23 worth three units a piece?

24 INMATE NGO: Three units except for

25 Spanish its five units.

26 DEPUTY COMMISSIONER FILANGERI: So you

27 are more than halfway towards your AA degree?

1 INMATE NGO: I have 41 unit.

2 DEPUTY COMMISSIONER FILANGERI: How many?

3 INMATE NGO: 41 units currently.

4 DEPUTY COMMISSIONER FILANGERI: And you
5 need 60?

6 INMATE NGO: Sixty.

7 DEPUTY COMMISSIONER FILANGERI: Great,
8 are you taking all the necessary core classes
9 that I'm assuming there are some classes that
10 have to be taken?

11 INMATE NGO: Yes, I still have to take
12 English which is required and math so Political
13 Science is required so I'm taking it right now.
14 After I take those two classes I will be taking
15 Small Business and Business Management.

16 DEPUTY COMMISSIONER FILANGERI: Great.

17 INMATE NGO: To upgrade.

18 DEPUTY COMMISSIONER FILANGERI: Great, it
19 seems to me I noticed that a test of Adult Basic
20 Education, it was 12.9.

21 INMATE NGO: Correct.

22 DEPUTY COMMISSIONER FILANGERI: All right
23 and I also saw a certificate of High School
24 Graduation from Fullerton in 1992.

25 INMATE NGO: Correct.

26 DEPUTY COMMISSIONER FILANGERI: Okay, all
27 right. Let's go back to the Counselor's post-

1 conviction progress report. It says that you
2 are assigned as the culinary store keeper office
3 aid with satisfactory grades. You've got
4 certificates of completion in automotive
5 refinishing in 1997 and upholstery in 1997. Now
6 that was when you were at LA County.

7 INMATE NGO: Lancaster.

8 DEPUTY COMMISSIONER FILANGERI: Lancaster
9 that's it, Lancaster. You haven't had any
10 vocational upgrading since you've been at CTF?

11 INMATE NGO: Well the only one that they
12 have right now it was drafting and at that time
13 was computer data.

14 DEPUTY COMMISSIONER FILANGERI: It says
15 that your on the computer processing or the data
16 processing waiting list but I heard that people
17 been on that list forever.

18 INMATE NGO: Forever, it's so I have a
19 upgrade on forklift things which is trade in
20 itself, a forklift operator.

21 DEPUTY COMMISSIONER FILANGERI: That's
22 right, you didn't mention it. I did see that.

23 PRESIDING COMMISSIONER BRYSON: It's in
24 here.

25 DEPUTY COMMISSIONER FILANGERI: 2002, I
26 saw that.

27 INMATE NGO: I am certified and I have a

1 new updated license I just been renewed.

2 DEPUTY COMMISSIONER FILANGERI: Do you
3 use that forklift operator's license in this --

4 INMATE NGO: Facility yes to move.

5 DEPUTY COMMISSIONER FILANGERI: Culinary
6 store keeper office aid?

7 INMATE NGO: Right.

8 DEPUTY COMMISSIONER FILANGERI: Good.
9 Are there any more upgrades you can do on that?

10 INMATE NGO: Besides fork lifting?

11 DEPUTY COMMISSIONER FILANGERI: Something
12 about jacks you had some sort of certification.

13 INMATE NGO: Those are hand jacks, it's
14 just like manual by my self. It's pretty easy
15 to operate, they electric ones to though.

16 DEPUTY COMMISSIONER FILANGERI: Okay in
17 terms of your education I also saw some peer
18 education back in 1999 for sexual transmitted
19 disease, HIV, AIDS, TB and hepatitis.

20 INMATE NGO: Correct.

21 DEPUTY COMMISSIONER FILANGERI: I saw a
22 document for anger management in 2005 and some
23 2000 documents for Salesmanship and Key to
24 Fatherhood, something through the Muslim Chapel
25 was it?

26 INMATE NGO: Correct.

27 DEPUTY COMMISSIONER FILANGERI: Okay

1 let's go to the psychological evaluation. My
2 file indicates that there was a new
3 psychological evaluation ordered 1/20/06 which I
4 would guess is the reason why I'm having to use
5 the last one from 2002. I realize it's old but
6 it's not particularly negative so I wouldn't be
7 surprised if we did have a new one it wouldn't
8 be similar. And you should also know that the
9 board has a new directive that if your not
10 involved in the -- if your not Triple CMS or EOP
11 then we are not going to be asking for updated
12 psych reports.

13 **INMATE NGO:** No I'm not.

14 **DEPUTY COMMISSIONER FILANGERI:** So this
15 one is dated 1/31/02 and it's signed by, no it's
16 not signed by C. Saindon S-A-I-N-D-O-N PHD,
17 staff psychologist although he appears to be the
18 writer. It is signed by Bill Zika Z-I-K-A PHD
19 Senior Supervising Staff Psychologist. Under
20 clinical assessment on page four, current
21 diagnostic impressions on axis I no contributory
22 clinical disorder, axis II deferred, global
23 assessment of functioning score is 90. The
24 examiner writes that there's no evidence that
25 inmate Ngo currently suffers from any
26 psychiatric illness. Under review of the life
27 crime the inmate stated that he agreed with the

21

1 version of the crime given in the Central File
2 and the verdict from sentencing, however he
3 stated that no one intended to kill the victim.
4 Under assessment of dangerousness item 14 the
5 examiner writes that cocaine use and gang
6 affiliation resulted in the current offense.
7 Under item C, the most significant risk factors
8 of this inmate as a precursor to violence or
9 return to criminal behavior would be his re-
10 involvement with others having a criminal
11 history and or gang members. If use of alcohol
12 and or drugs in isolation from his family
13 members. Clinical observations, the inmate is
14 competent and responsible for his behavior.
15 Inmate does not have a mental disorder which
16 would resuscitate treatment either during his
17 incarceration period or following parole. In
18 back of the short file there is several items
19 I'd like to make note of. Oh yeah, here's the
20 tape test score, that was back in 1997 for 12.9
21 and there's a list of disciplinaries, there are
22 no 115's, two 128's minor in 1997 and 2000 for
23 failure to respond to a medical duckett, and a
24 covered window respectively. Here is the
25 certificate to anger management that I already
26 said, talked about. And there's a series of
27 chronos. one 11/06 for NA attendance 12/8/05

25

1 completion of the Phobic Anger Management Class,
2 10/28/05 a laudatory chrono signed by
3 Correctional Supervising Cook W. Rogers R-O-G-E-
4 R-S, says he finds you to be a reliable worker
5 who needs little or no supervision working in
6 the culinary warehouse store keeper. Says that
7 you are responsible for many tasks that require
8 attention to detail and accuracy and the writer
9 believes you would be an asset to any employer
10 upon release given your range of skills
11 including certification for the operation of
12 forklifts and power jacks. 6/13/05 is a chrono
13 for NA, 3/12/05 Narcotics Anonymous, 1/5/05
14 Correctional Supervising Cook W. Rogers writes
15 again that your , commending your outstanding
16 performance of your assignment, your still in
17 the culinary warehouse store keeper and Rogers
18 believes you can be relied upon to take the
19 initiative to ensure the varies duties your
20 responsible for are completed and you would be
21 an asset to any employer upon release given your
22 range of skills. 10/22/04 Narcotics Anonymous,
23 9/27/04 NA. Is there anything else that you
24 want to call the panel's attention to regarding
25 behavior during the last, since August of 2004?

26 INMATE NGO: That should be it for my
27 incarceration for what I been doing but as you

1 can I see I have a lot of support letter's here.

2 DEPUTY COMMISSIONER FILANGERI: That's in
3 another segment of the hearing.

4 INMATE NGO: All right.

5 DEPUTY COMMISSIONER FILANGERI: Right now
6 I am just focusing on your behavior in the
7 institution and I don't mean to cut you off.

8 INMATE NGO: Oh no problem.

9 DEPUTY COMMISSIONER FILANGERI: If there
10 is something else that you have done that you
11 want to call our attention to now would be the
12 time.

13 INMATE NGO: No that would be all.

14 DEPUTY COMMISSIONER FILANGERI: Okay.

15 INMATE NGO: Thank you.

16 DEPUTY COMMISSIONER FILANGERI: Thank
17 you.

18 PRESIDING COMMISSIONER BRYSON: All
19 right, we'll talk about your parole plans and
20 support which I have to say is extensive and --

21 DEPUTY COMMISSIONER FILANGERI: I'm
22 sorry, I forgot to mention the certificate that
23 Mr. Ngo handed us that 2005 certificate of
24 appreciation for your generous donation to the
25 5th Annual Correctional Training Facilities
26 Teddy Bear Drive. I'm sorry.

27 PRESIDING COMMISSIONER BRYSON: Thank

1 you. It's very well thought out and well
2 organized, that's very helpful to the board.

3 INMATE NGO: Thank you.

4 PRESIDING COMMISSIONER BRYSON: Let's go
5 to your parole plans and I'd like to read these,
6 these seem very current, I assume they are.

7 INMATE NGO: Yes they are.

8 PRESIDING COMMISSIONER BRYSON: We will
9 go with this first. You've organized it in a
10 liable way. First you have articulated what you
11 plan to do in the first year of adjustment and
12 then for the next two to five years. So for the
13 first one to twelve months you have written that
14 you will first report to work at "First China
15 Kitchen" or "Hot Wok" which will meet your
16 immediate needs. So you would be working as a
17 cook there?

18 INMATE NGO: Waiter, cashier, it don't
19 matter.

20 PRESIDING COMMISSIONER BRYSON: Okay
21 second you would continue working toward
22 completing your Associates Arts Degree in
23 Liberal Arts at Coast Line Community College.

24 INMATE NGO: Correct.

25 PRESIDING COMMISSIONER BRYSON: Third you
26 would reinforce your relationship with your
27 family members, academically and technically

1 Fifth or fourth you would continue to attend and
2 participate in the local Narcotics Anonymous
3 Meetings and then you would also purchase an
4 automobile for transportation. All right now,
5 this stuff tails into where you would plan to
6 reside during this time which would be with your
7 mother, Phuong Hung Ngo at Monterey Park. Is
8 there anyone else living at home right now with
9 her?

10 **INMATE NGO:** My little brother, he's
11 taking care of her.

12 **PRESIDING COMMISSIONER BRYSON:** And how
13 is he doing, what's he do?

14 **INMATE NGO:** He works at Kaiser
15 Permanente.

16 **PRESIDING COMMISSIONER BRYSON:** Oh he
17 does.

18 **INMATE NGO:** So, he's taking care of her.

19 **PRESIDING COMMISSIONER BRYSON:** And does
20 he have a record of any sort?

21 **INMATE NGO:** No, I am the only one.

22 **PRESIDING COMMISSIONER BRYSON:** Okay well
23 that's good actually. All right and then -- let
24 me go ahead now at this point and divert again
25 to this place of residence, places of residence
26 that you allude to. You have an alternative
27 residency that you've planned in the event

1 something unforeseen occurs. I've made
2 arrangements to obtain housing, transportation,
3 food, clothing at the following addresses. Now
4 are these all relatives?

5 INMATE NGO: Yes.

6 PRESIDING COMMISSIONER BRYSON: All
7 right, and he lists Lisa and Raymond Lau L-A-U
8 in Alhambra, is that Chi Fong Ngo?

9 INMATE NGO: Chi Fong Ngo..

10 PRESIDING COMMISSIONER BRYSON: Chi Fong
11 Ngo thank you, that's in Monterey. And Julie
12 and Raymond Seeto S-E-E-T-O in Placentia
13 California.

14 INMATE NGO: Right.

15 PRESIDING COMMISSIONER BRYSON: That's
16 good so you'll have alternatives and I believe
17 I've seen support letters in here that we will
18 be going over from these people. Okay, so that
19 would be -- upon my release I will be working at
20 the following places of business, so here you
21 are giving options?

22 INMATE NGO: Correct.

23 PRESIDING COMMISSIONER BRYSON: All
24 right, now you're listing these, you realize
25 does not constitute verification in our minds
26 because this is your out reach. Have you, how
27 have you contacted these establishments have

1 you had personal contact with them or --

2 INMATE NGO: Yes I have personal contact
3 with them because my uncle owns these, the First
4 China Kitchen and Hot Wok.

5 PRESIDING COMMISSIONER BRYSON: I see.

6 INMATE NGO: And he just started a new
7 business called Empire Lighting, one in New
8 Orleans Heights and one in Riverside.

9 PRESIDING COMMISSIONER BRYSON: And what
10 is Empire Lighting, what is it like?

11 INMATE NGO: From my understanding it's
12 just selling lamps and stuff.

13 PRESIDING COMMISSIONER BRYSON: Lamps and
14 things?

15 INMATE NGO: Kitchen furniture and what
16 not, accessories.

17 ATTORNEY RUTLEDGE: He has a letter in
18 there to.

19 INMATE NGO: Yeah.

20 PRESIDING COMMISSIONER BRYSON: All
21 right, okay good.

22 INMATE NGO: Updated business card along
23 with it.

24 PRESIDING COMMISSIONER BRYSON: Okay.

25 INMATE NGO: So and AC Financial which is
26 my brother in law where my sister Julie, Raymond
27 Seeto they own that company.

21

1 PRESIDING COMMISSIONER BRYSON: I see,
2 and what would you do for them do you think?

3 INMATE NGO: Well probably clerical
4 duties to begin.

5 PRESIDING COMMISSIONER BRYSON:
6 Initially.

7 INMATE NGO: To start out.

8 PRESIDING COMMISSIONER BRYSON: Okay, all
9 right. Then you have a projected plan for the
10 next two to five years. First you would
11 continue to establish yourself as a law bidding
12 citizen with respect and integrity. Two become
13 a concerned community member about negative
14 influences that our youth face today. Three
15 help to change my community into a safe and
16 wholesome environment. How would you do that?

17 INMATE NGO: Well just by teaching kids
18 just you know, talking to kids and cause I'm
19 trying to organize, not try but like organize
20 station called I-Inga right which is based on
21 community for the kids. It's supported by NFL,
22 stores like that and it's well known so I would
23 like to keep in contact with them out there so
24 you know I can educate the kids about what
25 violence gang can impact on family and anyone in
26 the community that sorts.

27 PRESIDING COMMISSIONER BRYSON:

1 Outstanding, okay. Continue working and open a
2 savings account and finally use money saved to
3 start my own business. You also have made,
4 presented a statement here as to your overall
5 plan. Either I can read that now or you're
6 welcome to read this as part of your closing
7 statement. Would you like to read it then?

8 INMATE NGO: Oh no, I have a closing
9 statement.

10 PRESIDING COMMISSIONER BRYSON: All
11 right, would you like to read this here?

12 INMATE NGO: What?

13 PRESIDING COMMISSIONER BRYSON: This is
14 your overall plan, this is immediately following
15 the place of residences.

16 INMATE NGO: My overall plan is to spend
17 my time working to earn a living wage, assist my
18 mom with maintaining the household in a loving
19 good atmosphere and to work closely with my
20 assigned parole officer to ensure that my
21 understanding of all conditions of parole is
22 complete and in compliance. The evidence that I
23 asked to present above strongly show great
24 institutional program efforts. More over I have
25 made every attempt to comply with BPT to demand
26 more therapy as shown in psychological
27 consideration portion of this Memorandum. The

1 California Department of Corrections have made
2 final determination that I do not qualify for
3 nor do I require continued therapy where public
4 safety issue are concerned. I've made every
5 effort to change from the immature 19 year old I
6 was at the time of the commitment offense into
7 the mature, responsible and well reasoned 32
8 year old adult I am today. I submit to this
9 panel that my institutional programming is
10 sufficient to warrant a finding of suitability
11 at this time. In addition, I am willing to
12 volunteer submit to a continuous electronic
13 monitoring in accordance with Penal Code 9000
14 and I am willing to have my wages garnished for
15 the purpose of paying for the cost of my parole
16 during the parole period. For the all the
17 reasons stated above I urge this panel of the
18 Board of Prison Terms to make a unanimous
19 finding that I am no longer would pose an
20 unreasonable risk of danger to the public if
21 paroled at this time. Find me suitable for
22 parole and set a release date in accordance with
23 applicable regulation regarding the length of
24 time I may have yet to serve.

25 PRESIDING COMMISSIONER BRYSON: Thank
26 you.

27 INMATE NGO: Thank you for your time and

1 consideration.

2 PRESIDING COMMISSIONER BRYSON: All
3 right, let's go to your support letters.

4 INMATE NGO: Okay.

5 PRESIDING COMMISSIONER BRYSON: And I
6 believe this even more updated than our board
7 packet so I'll just operate off of this
8 document. Counsel do you concur?

9 ATTORNEY RUTLEDGE: Yes.

10 PRESIDING COMMISSIONER BRYSON: All right
11 and I'm just going to elude to them, frankly
12 there's quite a few as you know and so we
13 actually, I have read most all of them. I
14 believe the other Commissioner has also and we
15 will be going through them in our deliberations
16 extensively but you have a letter of support
17 from Empire Lighting from Calvin Ung U-N-G Ung
18 and is this your uncle?

19 INMATE NGO: My uncle.

20 PRESIDING COMMISSIONER BRYSON: Okay, and
21 this is dated June 21st, 2005.

22 INMATE NGO: Correct.

23 PRESIDING COMMISSIONER BRYSON: And he is
24 totally supportive of your release. He says
25 that I am the Chinese Restaurant and lighting
26 retail business, he mentions both of those.

27 Between these two businesses I have about 25

1 employees. At any time I am always will to
2 offer a job position that is suitable for Sieu.
3 All right, he also references other, your
4 siblings, you mom, your other uncles, aunts and
5 cousins who in aggregate provide support and
6 care for you. Then we have a letter, one
7 moment, from Donald G. Rubright R-U-B-R-I-G-H-T
8 the Senior Deputy Public Defender of Orange
9 County, this letter is dated June 23rd, 2005. I
10 represented Mr. Ngo in the case that sent him to
11 prison. I've been a criminal defense lawyer for
12 almost 30 years and I represented over 40
13 persons accused of homicide. I do not see my
14 clients through rose colored glasses however the
15 circumstances of Sieu's case are unusual enough
16 that I feel compelled to make a statement on his
17 behalf. I am going to read this in it's
18 entirety because I think it's worth reading. At
19 the time I represented him, Sieu was a very
20 likeable young man with a minor criminal record.
21 To my recollection he had no convictions for any
22 crimes of violence. The incident in question
23 was very different from the typical "gangs case"
24 and the facts are worth sketching for your
25 review. Sieu and his friends were a want to be
26 type gang who really did not have a significant

27 history or established turf in Orange County.

36

1 On the day of the incident, some of Sieu's
2 friends by chance went to the McDonalds which
3 was near Fullerton High School in Northern
4 Orange County. Sieu was not present at the
5 time. One of Sieu's friends got in a staring
6 match with the decedent and some of his friends
7 who were members of "Toker Town" T-O-K-E-R a
8 long established Hispanic gang in Fullerton.
9 Essentially the Toker Town group told Sieu's
10 friends that they were not welcome in Fullerton
11 where some of them already lived and they should
12 get out of town. Angered by this Sieu's friends
13 decided to confront the decedents group after
14 school got out that day. Sieu was called to
15 help out in case they should be out numbered.
16 There group waited after school and confronted
17 the decedent and one of his friends about two
18 blocks south of Fullerton High School, not on
19 school grounds. From all appearances this was
20 intended to be a fist fight. Sieu and the
21 friends that had been in the stare down
22 approached the decedent and another young who
23 were walking on the sidewalk. A fist fight is
24 how it started, however the decedent's friend
25 fled just after the punching began and that left
26 Sieu and his friend fighting the decedent who
27 was significantly larger than Sieu and his friend.

1 Of course this wasn't fair but nothing at this
2 point suggested that this was intended to be a
3 homicide. While the fist fight was ongoing a
4 third member of the group Sieu was part of ran
5 forward to the scene. While the fight was still
6 in progress he reached around Sieu and shot the
7 decedent killing him and narrowly missing Sieu.
8 Sieu and his group then fled ultimately being
9 arrested out of state. Evidence was received to
10 show that Sieu and his friends knew that a gun
11 was in the car. However there was no evidence
12 to show that there was a plan to use it. Based
13 upon the theory of foreseeable consequences,
14 Sieu and several co-defendants were convicted or
15 plead guilty to the murder. The following is
16 underlined, Sieu was not the shooter and no
17 evidence suggested to show that he suggested,
18 encouraged or aided or abetted the shooting in
19 any way. After the shooting Sieu angrily
20 confronted the shooter demanding to know why he
21 brought out the gun and asserting that he, Sieu,
22 didn't know the gun was going to be used. In
23 summary this was not a drive by or similar gang
24 crime where everyone knew that legitimately
25 should have know that death or serious bodily
26 injury was intended. On the contrary this

1 the group which due to the rest of the
2 circumstances swept all of them away by
3 derivative liability. I'm not suggesting that
4 Sieu and the other non shooters bear no
5 responsibility for the tragic outcome but for
6 the fight of course no shooting would have taken
7 place. However I would submit that the
8 circumstances here are significantly mitigated
9 when considered against other convictions of
10 this type. Assuming that Sieu's performance
11 within the Department of Corrections has been
12 positive I would urge his parole at the earliest
13 possible time. Then we have a letter from Chi
14 Phong Ngo of June 30th, 2005, that's C-H-I P-H-
15 O-N-G N-G-O and from your brother. According to
16 the productive things you've done in prison and
17 there willing to help by providing housing,
18 financial aid, job hunt and any other assistance
19 he may need to promote a better life. Now we
20 have next a letter of July 14th, 2005 from okay,
21 Thanh?

22 INMATE NGO: Thanh.

23 PRESIDING COMMISSIONER BRYSON: Thanh.

24 INMATE NGO: My sister.

25 PRESIDING COMMISSIONER BRYSON: That's T-
26 H-A-N-H T N-G-O yes she's your older sister,

37

1 person. And then she also is offering support,
2 our families have arranged for his support once
3 released. My husband's store number, she gives
4 that number, in Anaheim, her husband is Raymond.

5 INMATE NGO: Right.

6 PRESIDING COMMISSIONER BRYSON: Raymond's
7 mom and dad have offered him work if he wishes
8 to work there. Housing would not be a problem.
9 The housing indicated would be located in
10 Placentia and you also had indicated that. Then
11 we have a letter dated June 30th, 2005 from is
12 that Duck Phan Ngo?

13 INMATE NGO: Duck Phan Ngo.

14 PRESIDING COMMISSIONER BRYSON: Duck Phan
15 Ngo, a brother who gives you general support.
16 Says I work for Kaiser Permanente as a help desk
17 technician. I am willing to provide Sieu with
18 any support, financial or emotional in his
19 transition into society as an obedient citizen.
20 Then July 19th, 2005 from Connie Hua.

21 INMATE NGO: Hua.

22 PRESIDING COMMISSIONER BRYSON: All
23 right, H-U-A and she's your cousin and has known
24 you since childhood. She reviews your
25 accomplishments, doing all that he can to
26 improve his life, full support, I can offer
27 financial help, advice and encouragement.

40

1 offers her family as well. My father can offer
2 him a job at his restaurant. Is that one of the
3 restaurants that you referenced?

4 INMATE NGO: Yes, a few of my uncles own
5 restaurants so I can work at any one of them.

6 PRESIDING COMMISSIONER BRYSON: I see,
7 all right. Then we have a letter of March 22nd,
8 2004 from Calvin Ung?

9 INMATE NGO: Correct, my uncle again.

10 PRESIDING COMMISSIONER BRYSON: Okay and
11 then we have a letter of May 22nd, 2004 from
12 Phang Hung Ngo?

13 INMATE NGO: My mom.

14 PRESIDING COMMISSIONER BRYSON: Okay.

15 ATTORNEY RUTLEDGE: These are the letters
16 you brought for your last hearing?

17 PRESIDING COMMISSIONER BRYSON: These go
18 back to the last letters.

19 INMATE NGO: These were my last letters.

20 PRESIDING COMMISSIONER BRYSON: We will
21 take note of that, there are quite a few of
22 them, probably a dozen of them I would say
23 attached. Okay and then earlier letters beyond
24 that. All right this is a very extensive
25 comprehensive support file. All right do you
26 have anything further then because I think this
27 is quite comprehensive at this point.

1 INMATE NGO: No, that should cover it.

2 PRESIDING COMMISSIONER BRYSON: We will
3 be reviewing this even further. We have sent
4 out 3042 notices, those notices go to agencies
5 having a direct interest in your case. We have
6 a representative from the Orange County District
7 Attorney's Office present who will have the
8 opportunity to make a statement regarding parole
9 suitability prior to the conclusion of this
10 hearing. First Commissioner do you have any
11 questions for the inmate at this time?

12 DEPUTY COMMISSIONER FILANGERI: No thank
13 you.

14 PRESIDING COMMISSIONER BRYSON: All
15 right, Mr. Crofoot do you have any questions of
16 the inmate?

17 DEPUTY DISTRICT ATTORNEY CROFOOT: Thank
18 you, I have -- the reports indicate that the
19 inmate has multiple tattoos, I see specifically
20 referenced a tiger on the chest. Is that tiger,
21 does that have significance with the membership
22 into the Tiger Mafia?

23 INMATE NGO: No Sir.

24 DEPUTY DISTRICT ATTORNEY CROFOOT: What
25 is the significance of the tiger.

26 INMATE NGO: The tiger was just for, it
27

1 same tiger but all different, all five of us.

2 It's not for Tiger Mafia or nothing.

3 DEPUTY DISTRICT ATTORNEY CROFOOT: Okay
4 and the Fullerton Boyz is a gang as well is that
5 correct?

6 INMATE NGO: It's more like a want to be,
7 there are only five of us, we just friends.
8 Nothing more can say to change it.

9 DEPUTY DISTRICT ATTORNEY CROFOOT: The
10 probation report indicates a tattoo Wong Lee
11 under the left arm, what is the significance of
12 that tattoo?

13 INMATE NGO: That is my ex-girlfriend's
14 name that's all.

15 DEPUTY DISTRICT ATTORNEY CROFOOT: And
16 does the inmate have any other tattoos other
17 than those two?

18 INMATE NGO: That one no.

19 DEPUTY DISTRICT ATTORNEY CROFOOT: No.

20 INMATE NGO: That's all I have.

21 PRESIDING COMMISSIONER BRYSON: You don't
22 have any other tattoos is that correct?

23 INMATE NGO: Correct.

24 PRESIDING COMMISSIONER BRYSON: All
25 right.

26 DEPUTY DISTRICT ATTORNEY CROFOOT: Was

1 crime?

2 INMATE NGO: Yes I was, I was attending
3 at Pasadena City College..

4 DEPUTY DISTRICT ATTORNEY CROFOOT: And
5 was this --

6 DEPUTY COMMISSIONER FILANGERI: This is
7 side two of the tape recording of the hearing
8 transcript for Mr. Sieu Ngo, last name spelled
9 N-G-O J-07024. Sorry for the interruption.

10 DEPUTY DISTRICT ATTORNEY CROFOOT: Thank
11 you. The car that was used on the day of the
12 crime, was that the inmate's car?

13 INMATE NGO: No it wasn't.

14 DEPUTY DISTRICT ATTORNEY CROFOOT: Whose
15 car was that?

16 INMATE NGO: I think it belonged to Jimmy
17 Dao.

18 DEPUTY DISTRICT ATTORNEY CROFOOT: And
19 that car was later burned is that correct?

20 INMATE NGO: Correct Sir.

21 DEPUTY DISTRICT ATTORNEY CROFOOT: All
22 right and what were the circumstances of burning
23 that car?

24 INMATE NGO: My friend wanted to get rid
25 of it so when we were leaving the state of
26 California we didn't want to be followed so they